Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Local Competition	)	
Provisions in the Telecommunications Act	)	CC Docket No. 96-98
of 1996	)	
	)	

COMMENTS OF OMNIPOINT CORPORATION

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Date: May 16, 1996

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Omnipoint Corporation ("Omnipoint"), by its attorneys, files these comments in response to the Commission's April 19, 1996 Notice of Proposed Rulemaking, FCC 96-182 ("NPRM").

Introduction and Summary

Omnipoint focuses its comments on four issues relevant to broadband PCS and the implementation of the local competition provisions of the Telecommunications Act of 1996, 110 Stat. 56 (the "1996 Act"). First and most important, broadband PCS operators should not be declared "local exchange carriers" ("LECs") in this proceeding; the Commission should rely on the preexisting Section 332(c)(3) petition process to determine if a CMRS operator is a LEC. Second, a CMRS operator, as a "telecommunications carrier," is entitled to seek interconnection with the LEC either through its rights under Sections 251, 252 or its rights under Section 332. Third, as the Commission implements the LEC obligation for reasonable interconnection at all technically feasible points, it should clarify that it is an unreasonable interconnection requirement for any LEC to require CMRS operators to connect in every NPA. Finally, Omnipoint urges the Commission to adopt strong federal rules which provide consistent national guidelines on interconnection, network unbundling, and collocation.

I. Broadband PCS Operators Are Not Local Exchange Carriers

At ¶ 195 of the NPRM, the Commission asks "whether, and to what extent, CMRS providers should be classified as LECs and the criteria, such as wireless local loop competition in the LEC's service area by the CMRS provider, that we should use to make such a determination." Omnipoint submits that the Commission should rely on the standards articulated in Section 332(c) of the Communications Act, as implemented in the Commission's rules at 47 C.F.R. § 20.13. Under this scheme, a broadband PCS operator would not be deemed a "local exchange carrier" until the State shows that the operator's rates or practices are unreasonable and/or it offers service to a substantial portion of the public. This test provides a sound basis for the Commission to decide when CMRS operators should be subject to the full panoply of state and federal LEC regulation.

A. A PCS Operator Should be Regulated As a LEC Only After Section 332(c)(3) Standards Have Been Met

As noted in the NPRM at ¶ 195, the 1996 Act excludes CMRS operators from the definition of "local exchange carrier: "Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term." 47 U.S.C. § 3(26). Unlike other provisions of the 1996 Act,[1] the exception for CMRS provides the Commission with no explicit test for determining when a CMRS operator should be deemed a "LEC." It does, however, explicitly reference Section 332(c) of the Communications Act.

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1 *See, e.g.*, 47 U.S.C. § 251(h)(2) (explicit three part test for determining when a LEC should be deemed an incumbent LEC).

In section 332(c)(3), Congress laid out a specific procedure for determining when it is appropriate for CMRS operators to be subject to State rate regulation that would also serve as an appropriate test for determining when a CMRS operator should be deemed a "LEC." This procedure requires the States to individually petition the FCC, which evaluates each petition on the basis of two public interest criteria:

> (i) whether market conditions with respect to the CMRS service under consideration fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly and unreasonably discriminatory; or
>
> (ii) whether market conditions, as described in (i), exist and whether the CMRS service under consideration is a replacement for landline exchange service within such State or specific geographic area.

See 47 U.S.C. § 332(c)(3). In 1994, the Commission adopted a detailed procedure for Section 332(c) petitions, codified at 47 C.F.R. § 20.13(a).

This statutory test best satisfies the Commission's obligation to regulate CMRS in the public interest. Both Congress and the Commission have decided that CMRS entrants should not be saddled with regulatory burdens that hinder or prevent full competition with more traditional LECs and wireline technologies.[2] The Section 332(c) test is appropriate because it preserves the deregulated status of CMRS so long as CMRS neither threatens consumer welfare with unreasonable rates (part 1 of the test) nor has grown to such a degree that it is an effective substitute for the incumbent LEC services (part 2 of the test). Until that time, the CMRS operator is relieved of LEC-type regulatory burdens so that it can act as a spirited, if smaller,

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2 47 U.S.C. § 332(c)(1) FCC is given explicit authority to forbear from full Title II regulation of CMRS); Second Report and Order, GN Dkt. No. 93-252, 9 FCC Rcd. 1411, 1418 (1994) ("CMRS Second R&O") ("we establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licenses who are classified at CMRS..."). We note that the 1996 Act, at Section 253(e), reaffirms Congress' commitment to the state preemption provisions of Section 332(c)(3).

competitor to the incumbent LEC, which helps to keep rates to consumers for both wireline and wireless services at competitive levels. Because so many CMRS operators are also small businesses, due in large part to the Commission's "entrepreneur's" auction policies, the Section 332(c) procedure will also prevent the introduction of LEC-like regulation during the initial years of a small business operator's market entry, which could effectively overwhelm a small business in contravention of the Commission's Section 257 obligations. 47 U.S.C. § 257.

By contrast, adoption of a separate test for determining "LEC" status under Section 3(26) could lead to the anomalous result that a CMRS operator is a "LEC" for federal purposes but not subject to state rate regulation as a "LEC," unless the state separately prevails under Section 332(c).

The legislative history of the CMRS exception to the "local exchange carrier" definition also supports that Congress meant for the Commission to look to the Section 332(c) petition process. The House Committee explains.

> [a]s part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted section 332(c), which establishes the statutory framework for commercial mobile services. Section 332(c) would continue to govern the offering of commercial mobile services after enactment of this bill, until such time as the Commission finds that a commercial mobile service has become an effective substitute for wireline service. If or when the Commission makes such a finding, the provider of such mobile service shall be considered a LEC for purposes of this bill.

H.R. Rep. 204, 104th Cong., 1st Sess. at 126 (1995) ("House Committee Report").[3] Congress envisioned that the Commission would interpret the CMRS exception in Section 3(26) consistent

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3 The CMRS exception was clearly based on the House Bill definition of "local exchange carrier" at H.R. 1555, § 501(a). While the Conference Report (H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 116 (1996)) (the "Conference Report") attributes it to the Senate, the Senate definition of "local exchange carrier" contained no such exception. *See* S. 654, § 8(a).

with the explicit deregulatory provisions of the 1993 amendments and the Section 332(c)(3) process already in place at the time of passage of the 1996 Act.

B. The Section 332(c) Process Takes Into Account the Provision of CMRS Wireless Local Loop

The provision of wireless services to fixed stations, including wireless local loop, should be treated under the same regulatory regime as other services provided through CMRS licensed spectrum. For several reasons, CMRS operators offering wireless local loop services should not be deemed "local exchange carriers" in this proceeding.[4] Rather, the Commission should rely on the same Section 332(c) process, as outlined above, to determine on a state-by-state basis whether the CMRS market lacks competition or has become a substitute for traditional wireline LEC service.

Most importantly, fixed wireless services are part of the flexible range of services that have always been included in the concept of PCS. For years, the Commission has encouraged PCS operators to provide wireless services in competition with the LECs' traditional wireline monopoly. *See*, First Report and Order, ET 92-9, 7 FCC Rcd. 6886, 6886 (1992) (PCS experimental advances included "mobile facsimile, wireless private branch exchange, and wireless area networks"); id. at 6888 (FCC allocates PCS spectrum at 2 GHz because "it is important that the emerging technology bands be able to meet the requirements of a significant number of new services and to support the operation of mobile, *as well as fixed*, operations.")(emphasis added); Second Report and Order, GEN Docket No. 90-314, 8 FCC Rcd. 7700, 7702 (1993) ("The regulatory plan embodied in the new PCS rules will provide licensees . . . the maximum degree of flexibility to introduce a wide variety of new and innovative

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4 The Commission has initiated a separate rule making proceeding, "Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services." WT Docket No. 96-6, to consider the proper regulatory treatment of fixed wireless services.

telecommunications services and equipment."); Letter of Regina M. Keeney, Chief, Wireless Telecommunications Task Force, to A. Thomas Carroccio (November 15, 1994) (PCS includes fixed communications such as "links connecting PCS base stations and other network operations facilities; transmission of PCS network control and signaling information; and facilities linking users' premises to PCS network"); In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rulemaking, ET Docket No. 94-32, 10 FCC Rcd. 4769, 4781 (1995) ("wireless local loop service could be provided in spectrum allocated for broadband PCS in the 1850-1990 MHz band."). *See also*, "Hundt Calls Wireless Industry 'Dawn of New Age of Competition,'" Washington Telecom News, Feb. 6, 1995 (Speaking before the CTIA convention, Chairman Hundt called on PCS and other wireless operators to be "the raiders of the local loop.").

There is no reason for the Commission in this proceeding to establish separate regulatory treatment that would segregate fixed services from other services offered by CMRS licensees. Section 332 of the Communications Act, while it lays out a specific regulatory plan for CMRS, draws no such distinction -- CMRS operators offering new competitive pressure on either the incumbent mobile cellular provider or the incumbent LEC wireline provider are treated alike. When and if a CMRS operator obtains market power or becomes a substantial substitute for wireline LEC service, the statute provides the Commission with a specific two-prong test to regulate the operator as a LEC if necessary.[5] This test for deciding if a CMRS operator should be judged a "local exchange carrier" is well-grounded statutorily and comports with the pro-competitive objectives of the 1996 Act.

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5 We also note that the Commission must annually review and report to Congress on the state of competition in the CMRS marketplace. 47 U.S.C. § 332(c)(1)(C). Thus, the Commission and its staff will be monitoring the impact on competition that fixed wireless services have on the local telecommunications market.

Further, as a practical matter, wireless providers, and especially broadband PCS operators, currently face network capacity constraints not borne by wireline providers that prevent wireless carriers from servicing all of the telecommunications demand of a particular area, in a manner consistent with traditional local exchange service. The number of cell sites in a particular geographic location limits the number of users a wireless network can service at any given time. At this time, and even with aggressive build-out of a particular region, a PCS operator simply does not have the bandwidth to carry the volume of telephone traffic carried by the wireline operator. Therefore, there is no reason to treat fixed PCS as if it did offer a LEC-like service.

In addition, attempting to separate a single CMRS provider's fixed and mobile service offerings, and then apply disparate regulatory regimes to each, would be a difficult to impossible regulatory task.[6] Many PCS operators hope to offer their subscribers the convenience of a single phone and single phone number. This was, after all, the promise of PCS -- service to anyone, at anytime, and anywhere. With a single service offering, the subscriber can benefit from the convenience of both mobile and fixed coverage using a single phone and a single phone number. For example, the subscriber can carry the phone when in transit, and hook it to a docking station for connection to a wireless PBX or used as a cordless phone when he or she arrives at home or office.[7] To regulate the fixed portion of the service as "local exchange carrier" service would effectively subsume the entire offering, including the mobile service, in apparent contravention

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6 Moreover, in many cases it is the end-user, and not the CMRS operator, that decides whether or not to use the service for fixed or mobile purposes. Indeed, it is currently impossible for the CMRS operator to even know whether its customers use their subscriber units for a fixed application, since the customer can easily convert from mobile to fixed by using a handset docking cradle.

7 Fixed services can also yield more efficient re-use of the PCS spectrum. In the example above, the wireless PBX can re-use the licensed spectrum at low-power levels which can effectively avoid interference with other CMRS users of the same spectrum.

of the Section 332 objectives to encourage a deregulated, competitive CMRS market.[8] Alternatively, such a classification would force CMRS operators to either abandon fixed offerings entirely or to unbundle fixed from mobile services; unbundling, however, is a regulatory requirement imposed only on incumbent LECs, not CMRS operators. 47 U.S.C. § 251(c)(3). To avoid these regulatory problems, the Commission should simply rely on the existing Section 332(c)(3) test.

C. The Resale Obligation Should Not Apply to Broadband PCS

At ¶ 197 of the NPRM, the Commission asks for comment on what types of resale restrictions, if any, should be permitted by a local exchange carrier. Because PCS operators should not be deemed "local exchange carriers" except through the Section 332(c)(3) process as described above, the LEC resale provisions do not apply to broadband PCS operators.

Omnipoint notes that the Commission has already initiated a proceeding to consider mandatory resale of CMRS services.[9] The issue of resale of local exchange carrier services should not be construed to affect whether it is in the public interest to force mandatory CMRS resale. The two markets are plainly different, with the wireline local exchange dominated by the incumbent LEC and so mandatory and non-discriminatory resale may well be in the public

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8 By contrast, allowing CMRS operators to meet consumer demands for fixed or wireless services without the regulatory burdens of LEC status comports with the Commission's regulatory objectives for all CMRS: "[t]he rise of competitive forces . . . has been made possible . . . by the Commission's deliberate dismantling of an old regulatory structure, which emphasized service classifications, and the creation of a new structure whose hallmark is flexibility, with regulation focused on protecting consumers by stimulating competitive forces." *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, First Report, 10 FCC Rcd. 8844, 8872 (1995).

9 In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Dkt. No. 94-54, Second Notice of Proposed Rule Making, 10 FCC Rcd. 10666 (1995) ("CMRS Second Notice").

interest. The CMRS market, however, is very unlike the wireline LEC market. The CMRS market will be highly competitive, with two cellular incumbents, three 30 MHz PCS providers and PCS Block D, E, and F entrants. Therefore, the public interest need for a competitive reseller in the wireless market is not as compelling as it is in the wireline LEC market. For these reasons, Omnipoint urges the Commission not to extend LEC resale obligations adopted in this proceeding to CMRS operators.

II. Regulation of Interconnection Between Incumbent LEC and CMRS Networks Must Reflect Differences In Statutory Rights/Obligations of the Two Operators

A. Broadband PCS operators are "telecommunications carriers," not "LECs"

As discussed above, PCS operators should not be deemed "local exchange carriers" until the Commission determines that it is in the public interest pursuant to the state-by-state petition process established in Section 332(c)(3) of the Communications Act. A PCS operator is, however, a "telecommunications carrier," as defined at 47 U.S.C. § 3(44), because it offers a "service . . . through a system of switches transmission equipment or other facilities . . . by which a subscriber can originate and terminate a telecommunications service." Id. at 3(47)(B). *See also* S. Rep. No. 23 104th Cong. 1st Sess. at 18 (1995) ("Senate Committee Report") ("telecommunications service definition "is intended to include commercial mobile service"); Conference Report at 3 (House recedes to the Senate with respect to the definition of "telecommunications service").

As "telecommunications carriers" that are not "local exchange carriers," broadband PCS operators are only subject to the duties prescribed in Section 251(a) of the 1996 Act. *See* NPRM at ¶ 248. Section 251(a)(1) imposes a general duty for broadband PCS operators to "interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers." This provision should not be interpreted as imposing new interconnection obligations on broadband PCS operators. The specific allowance for "direct or indirect" interconnection should be interpreted as requiring only that broadband PCS operators connect with the public switched

telephone network. Once connected to the PSTN, any other telecommunications carrier has either direct or indirect access to the broadband PCS operator's network. Because connection to the PSTN is itself a statutory prerequisite for any CMRS operator,[10] there is simply no need for the Commission to impose additional interconnection requirements on CMRS operators in this proceeding.

This position is also consistent with the Commission's tentative conclusions in the CMRS Second Notice, in which the Commission agreed with the majority of commenters that "it is premature, at this stage in the development of the CMRS industry, to impose a general interstate interconnection obligation on all CMRS providers." CMRS Second Notice, 10 FCC Rcd. at 10681. As the Commission noted, "[t]he fact that interconnection is already available through LEC facilities reduces the potential for CMRS providers to use denial of interconnection as an anticompetitive tool against their competitors." Id. at 10682. As the Commission also explained, CMRS operators have a continuing duty under Sections 201 of the Communications Act to establish "physical connections" with other carriers; if an issue of unreasonable refusal to interconnect arises, the Commission may still resolve such a dispute on a case-by-case basis pursuant to its powers under Section 208 of the Communications Act.

Therefore, the obligations of "local exchange carriers" under Section 251(b), or "incumbent local exchange carriers" under Section 251(c), do not apply to broadband PCS operators. However, as "telecommunications carriers," broadband PCS operators have rights pursuant to Section 251(b)(1)-(5) for resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation from all local exchange carriers. In addition, broadband PCS operators have rights as against all incumbent local exchange carriers, including

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10 47 U.S.C. § 332(d)(1) "commercial mobile service" means any mobile interconnected service provided to the public for profit) & (2) ("'interconnected service' means service that is interconnected with the public switched network . . .").

independent telephone companies, for interconnection, unbundled access to network elements, resale of services at wholesale rates, and collocation. Section 252 also provides for broadband PCS operators to request from the incumbent LEC "interconnection, services, or other network elements pursuant to section 25 ." and, if the LEC fails to provide such services voluntarily, the broadband PCS operator may seek relief from the states, the courts or the Commission. 47 U.S.C. § 252(a)(1)&(b)-(e).

B. CMRS Operators Have Interconnection Rights Under Both § 251 and § 332

Omnipoint agrees with the position stated in the NPRM at ¶ 169 that a CMRS operator may choose between its interconnection rights as a CMRS operator under Section 332(c) or its interconnection rights as a telecommunications carrier under Sections 251 and 252. The issue of whether it is "sound public policy for the Commission to distinguish between telecommunications carriers on the basis of the technology they use," NPRM at ¶ 169, is a moot question because Congress has provided two separate statutory means for CMRS operators to require interconnection with the LEC.

Section 332(c)(1)(B) of the Act requires that "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of the Act." 47 U.S.C. § 332(c)(1)(B).[11] This provision makes explicit the more general Section 201(a) obligation for "physical connection with other carriers" when it is in the public interest, by vesting with the Commission the powers to: (1) decide what is a "reasonable request for interconnection" by a CMRS operator and (2) issue an order directing another carrier, including an incumbent LEC, to interconnect with a CMRS operator. *See also* CMRS Second R&O, 9

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11 47 U.S.C. § 201(a) (Commission may order carrier "to establish physical connections with other carriers").

FCC Rcd. at 1493 ("The Budget Act [of 1993] requires the Commission to respond to the request of any person providing commercial mobile radio service, and if the request is reasonable, the Commission shall order a common carrier to establish physical connections with such service . . ."). Sections 251 and 252 of the 1996 Act have in no way superseded the Commission's Section 332 authority to order a LEC to interconnect with a CMRS operator, including through a bill-and-keep compensation arrangement. The 1996 Act does not implicitly repeal Sections 332 and 2(b) of the Communications Act; these provisions remain intact and cannot simply be ignored. 47 U.S.C. § 601(c) ("NO IMPLICIT EFFECT -- This [1996] Act and the amendments made by this [1996] Act shall not be construed to modify, impair, or supersede Federal . . . law unless expressly so provided in such Act or amendments.").[12] Indeed, Section 332 forms a part of the comprehensive statutory framework for CMRS interconnection that can and should be interpreted harmoniously with Sections 251 and 252.

The newly-enacted Title II, Part II provisions work in tandem with the Title III provisions. The 1996 Act affirms the Commission's authority to act in furtherance of Sections 251 and 332(c). 47 U.S.C. § 251(i) ("Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under Section 201"); Conference Report at 123 ("New subsection 251(i) makes clear the conferees' intent that *the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority* regarding interconnection under section 201 of the Communications Act.") (emphasis added). By adopting (in 1993) and retaining (in 1996) the CMRS interconnection provisions of Section 332, and then

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12 Morton v. Mancari, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."); United States v. Borden Co., 308 U.S. 188, 198 (1939) ("It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible.").

adopting the 1996 Act's more general interconnection scheme for all "telecommunications carriers," Congress provided CMRS operators with the option of pursuing interconnection either through Section 332 with the Commission, or through Sections 251 and 252 with private negotiation, arbitration, and state approval.[13]

Instead of placing the ongoing CMRS interconnection process on a completely different track, Sections 251 and 252 expand the available options for CMRS providers. These sections provide competing telecommunications carriers, including CMRS providers, with additional substantive rights for interconnection, and an additional process to obtain those rights, vis-à-vis the current local exchange monopoly. The 1996 Act unequivocally places the obligations to abide by the many safeguards of Sections 251 and 252 on the LECs, not the new entrant "telecommunications carriers." All LECs must comply with Section 251(b), including the duty to offer reciprocal compensation arrangements to requesting carriers. Id. at § 251(b)(4). Incumbent LECs have additional affirmative duties pursuant to Section 251(c), including the obligation to negotiate in good faith with requesting carriers, and to provide interconnection "on rates, terms, and conditions that are just, reasonable and nondiscriminatory." Id. at § 252(c)(1)&(2). Section 252 provides a further safeguard from incumbent LEC monopoly abuse by affording telecommunications carriers a process of State intervention and review of arrangements arrived at through private negotiation or arbitration with incumbent LECs. Id. at § 252(a)(1) & (b).

These provisions are intended to give competing telecommunications carriers *additional* rights to overcome the historical interconnection problems created by the LECs' continuing monopoly control of the local loop. *See* Conference Report at 121 ("section 251(b) imposes

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13 Even under the State approval process established by Section 252(e) of the Act, the Section 332(c)(3) prohibition on State regulation of CMRS interconnection rates still applies, preventing the States from review of certain aspects of the interconnection agreement.

several duties on all local exchange carriers" and "section 251(c) imposes several additional obligations on incumbent LEC[s]"); House Committee Report at 50 (Committee seeks to change historical and current monopoly market for local telecommunications services through introduction of competition); Senate Committee Report at 19 (intent of Senate interconnection provision was to impose obligations "on local exchange carriers possessing market power"). It would be entirely contrary to Congressional intent for the Commission to interpret these provisions as taking away from CMRS operators the rights to interconnection established under Section 332.

The CMRS operator, then, is provided with two statutory options for interconnection -- either through private negotiation (with the Section 251 and 252 agreement review safeguards) or through regulatory edict under Section 332. Under this scheme, a CMRS operator may elect to take its case directly to the Commission for resolution at any point in the private negotiation process. This bargaining strength will encourage incumbent LECs to negotiate with CMRS operators quickly and fairly. it should expedite the introduction of local CMRS competition and it should indirectly hastening the entrance of other competing providers. *See*, 47 U.S.C. § 252(i) (LEC must make available to all other telecommunications carriers an interconnection agreement approved under Section 252).

Therefore, the Commission must continue to interpret Section 332 meaningfully, and interpret Sections 251 and 252 as an avenue that the CMRS operator may pursue in addition to its rights under Section 332.

C. *Bill-and-Keep is A Permissible Mutual Compensation Method For Interconnection Under Either Section 332 or Sections 251, 252*

Omnipoint has presented comments and reply comments in "Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers," CC Docket 95-185, fully explaining its position that bill-and-keep is a necessary interim solution to the interconnection problems presently caused by incumbent LECs' refusal to negotiate interconnection on fair and reciprocal terms with CMRS operators. Mandating an interim

national bill-and-keep requirement is within the Commission's Section 332 and Section 2 authority and would further Congressional goals for rapid implementation of a competitive and national wireless network. Omnipoint will not reiterate here the arguments it has already presented.

In response to ¶ 243 of the NPRM, Omnipoint believes that the 1996 Act permits both the States and the Commission to require bill-and-keep arrangements. Section 252(d)(2)(B)(i) explains that pricing standards for both interconnection and transport and termination of traffic shall not be interpreted to preclude bill-and-keep arrangements. 47 U.S.C. § 252(d)(2)(B)("This paragraph [paragraph (d)] shall not be construed -- (i) to preclude arrangements that afford mutual recovery through the offsetting of reciprocal obligations, including . . . bill-and-keep arrangements"). While the Bell Companies argue this provision does not authorize the Commission or the states to impose bill-and-keep, this position begs the question because, as the Bell Companies acknowledge, the States and the Commission are to approve interconnection arrangements only if they are in the public interest. 47 U.S.C. § 252(e)(2)(A)(ii). The "public interest" standard could well include a bill-and-keep requirement for CMRS-LEC interconnection at least on an interim basis given the LECs' insistence on non-reciprocal compensation and the fact that the incumbent LECs currently have a bottleneck on local exchange service. Because the market is still awaiting competition that CMRS and other providers may bring, the reciprocal compensation goal of pricing standards based on costs in a competitive market[14] may be unrealizable unless regulators impose an interim bill-and-keep scheme that first ensures competition in the market. At that time, regulators can better assess the costs of interconnection and transport and termination of traffic.

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14 House Committee Report at 73 ("In determining the costs of interconnection, some approximation of the cost of terminating calls in a competitive market should be made.").

III. FCC Should Ensure Efficient Interconnection Rules for Regional Competitors

At ¶¶ 56-62 of the NPRM, the Commission seeks comment on how it can implement the 1996 Act provisions for interconnection with the incumbent LEC network at "any technically feasible point" and "just, reasonable and nondiscriminatory interconnection." 47 U.S.C. § 251(c)(2)(B) & (D). Omnipoint concurs with the Commission's conclusions generally, and it urges the Commission to open up the PSTN to greater interconnection.

One significant LEC interconnection practice not directly raised in the NPRM, however, is the requirement of at least one LEC that CMRS operators establish a point of interconnection in every LEC area code. This requirement forces CMRS operators and other competitors to the incumbent LEC to lease or purchase real estate and otherwise increases their costs. These costs could be avoided if LECs would allow competitors to interconnect directly each tandem. This practice stems from the LECs' unwillingness to recognize that broadband PCS operators are not constrained by exchange service areas or by LATA boundaries. Rather, the Commission licensed broadband PCS according to MTA and BTA boundaries so that operators could take advantage of the efficiencies of operating a system across large regional, multi-state areas.[15]

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15 The Commission adopted large geographic regions -- MTAs and BTAs -- for broadband PCS licensing "to promote the rapid deployment and ubiquitous coverage of PCS . . . follow[ing] the natural flow of commerce." Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994). The Commission rejected the smaller MSA and RSA cellular service regions for PCS because "[t]he ten year history of the cellular industry provides evidence generally that these service areas have been too small for the efficient provision of regional or nationwide mobile service;" the efficiencies to be gained from regional PCS providers were intended to "spur competition." Id. at 4987-88. In the Second Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7700, 7732 (1993), the Commission adopted large MTA license areas for PCS to "facilitate regional and nationwide roaming; [and] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets." The Commission also rejected geographic license areas based on LATA boundaries. Id. at 7730. Significantly, 41 of the 46 MTA license areas in the continental U.S. include the territory of more than one state; Omnipoint is not aware of a single MTA in the contiguous U.S. that lies entirely within one exchange area or LATA boundary.

The Commission should clarify in this proceeding that, as part of its obligation to offer reasonable interconnection terms and to interconnect at feasible points in the network, the incumbent LEC has an obligation to ensure its interconnection practices do not result in inefficiencies for competitive providers operating across multiple exchange areas. In short, the exchange areas or the LATA boundaries affecting their own regulatory decisions should not be used by incumbent LECs as a sword to fend off competition and drive up a competitor's costs past efficient levels.

IV. The Commission Must Take a Strong Role in Developing National Interconnection and Unbundling Standards

Omnipoint strongly supports the Commission's proposals to implement the 1996 Act local competition provisions by adopting federal guidelines and rules for interconnection, the unbundling of network elements, and collocation for interconnecting carriers. *See* NPRM at ¶¶ 50, 57, 61, 67, 79.

In general, federal standards ensure that all competitive operators, and especially PCS providers whose licenses span across several states, are not forced to grapple with disparate state regulations or standards. Operators building networks across several states must be able to rely on a single set of interconnection, unbundling, and collocation rules so that they can realize the efficiencies of such an interstate system.[16] By contrast, a system of conflicting or inconsistent state regulations will only deprive some customers of features or services offered in neighboring

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16 One example of federal standards that would advance efficient digital networks, including CMRS, is adoption of uniform "clocking" standards for the incumbent LECs and other carriers. Currently, digital systems are timed on the use of the LECs' stratum 1 clocking. The CMRS carrier's network, and especially its transmission equipment, is timed on the precision of the LEC's clocking. However, the use of a SONET ring, or other fiber-optic transmission, can cause a variance in the clocking which causes malfunction of digital networks. This is a national issue involving the coordination and interconnection of networks, and an issue that the Commission should address. The Commission should establish national standards specifying the maximum acceptable time variance for SONET ring transmission.

states. In addition, a single set of regulations eliminates the inefficiencies of implementing dissimilar network hardware/software and billing/measurement enhancements to accommodate dissimilar state or company interconnection and network facilities arrangements.

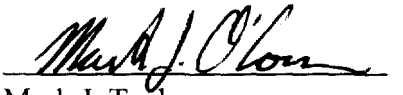
Moreover, adoption of a single and comprehensive set of federal rules will undoubtedly hasten local exchange competition to more areas of the country. While several states have initiated local competition rules and worked to open their markets, most states have not. *See* NPRM at n.43. National standards will remove disincentives for competitive market entry in those states that have not fully addressed the issues. For states that have adopted local competition provisions, national standards will rectify inconsistencies between neighboring states for the benefit of interstate competitors such as CMRS operators.

Conclusion

For the foregoing reasons, Omnipoint encourages the Commission to adopt interconnection and local competition rules that reflect Congress' statutory objectives for a truly competitive and flexible CMRS market.

Respectfully submitted,

OMNIPOINT CORPORATION

By: 

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Date: May 16, 1996